

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

KALEFE MARSH,)	
)	
Plaintiff,)	
)	
v.)	No. 1:19-cv-00641-JPH-DML
)	
MICHAEL BREEN,)	
JOSHUA SHAVERS,)	
BRANDON RICHIE,)	
AMBER KING,)	
)	
Defendants.)	

**ORDER DISMISSING ACTION AND
DIRECTING ENTRY OF FINAL JUDGMENT**

Plaintiff Kalefe Marsh, an inmate in the Indiana Department of Correction, commenced this 42 U.S.C. § 1983 lawsuit on February 13, 2019. Since he filed his complaint and a motion for leave to proceed *in forma pauperis*, he has not filed any other document. Mr. Marsh did not respond to the defendants' interrogatories or requests for production, and a letter from the defendants inquiring about overdue discovery responses went unanswered. *See* dks. 20 & 20-1.

When Mr. Marsh had not responded to discovery, the defendants moved for an order to compel. *Id.* The Court ordered Mr. Marsh to respond no later than July 12, 2019, to the motion to compel. Dkt. 22. The Order directed Mr. Marsh to either show that he had properly responded to the defendants' discovery or show cause why this action should not be dismissed for failure to cooperate in discovery. *Id.* Mr. Marsh has not responded and the time for doing so has passed. The defendants have moved for dismissal of this action. Dkt. 24. While the motion for sanctions, construed as a motion to dismiss, was pending the defendants also filed a motion for summary

judgment for failure to exhaust administrative remedies. Dkt. 26. Mr. Marsh has not responded to that motion and the time for doing so has passed.

Federal Rule of Civil Procedure Rule 37(b)(2)(A)(v) provides an action may be dismissed for the failure to obey a court order to provide or permit discovery. The Court's Order of June 26, 2019, is an order that required Mr. Marsh to provide discovery. Dkt. 22. Thus Mr. Marsh's failure to respond in any way to that Order has subjected this action to dismissal.


As noted above, Mr. Marsh has not filed any document since he commenced this action and has not responded to discovery or correspondence from the defendants, and he has not responded to the motion for summary judgment. He has not obeyed Court orders. Mr. Marsh has abandoned this case.

In dismissing an action where a party fails to obey a discovery order, the Seventh Circuit has said the dismissal is a "feeble sanction" if it is without prejudice. *Lucien v. Breweur*, 9 F.3d 26, 28 (7th Cir. 1993). Therefore the dismissal of this action will be with prejudice.

Accordingly, pursuant to Rules 37(b)(2)(A)(v) and 41(b), the defendants' motion for a sanction of dismissal, dkt. [24], is **granted**. The defendants' motion to compel, dkt. [20], third motion for an extension of time, dkt. [25], and motion for summary judgment, dkt. [26], are denied as moot. This action is **dismissed with prejudice**. Final judgment consistent with this Order shall now enter.

SO ORDERED.

Date: 11/8/2019


James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

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